

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

JAMES A. KAY, JR.)

Licensee of one hundred sixty
four Part 90 licenses in the
Los Angeles, California area)

PR DOCKET NO. 94-147

WT DOCKET NO. 94-147

DOCKET FILE COPY ORIGINAL

To: The Honorable Richard L. Sippel, Administrative Law Judge

MOTION TO DISQUALIFY COUNSEL

James A. Kay, Jr. (Kay), by his attorneys, respectfully requests that the presiding officer disqualify Bureau counsel in the above captioned matter. In support of his position, Kay shows the following:

The Bureau has selected Gary P. Schonman as one of its attorneys in the instant matter. However, Mr. Schonman is assigned to the Hearing Branch of the Mass Media Bureau. Accordingly, Mr. Schonman is precluded by statute from representing any bureau other than the Mass Media Bureau.

Section 5(b) of the Communications Act of 1934, as amended, provides that

From time to time as the Commission may find necessary, the Commission shall organize its staff into (1) integrated bureaus, to function on the basis of the Commission's principal workload operations, and (2) such other divisional organizations as the Commission may deem necessary. Each such integrated bureau shall include such legal, engineering, accounting, administrative, clerical,

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and other personnel as the Commission may determine to be necessary to perform its functions,
47 U.S.C. §155(b) (Section 5(b)).

Section 5(b) clearly requires each Commission bureau to be integrated to itself, each with its own legal personnel. Were a lawyer to represent more than one bureau, such a situation would dis-integrate the bureaus, in clear violation of the organizational mandate of Section 5(b).

Mr. Schonman is assigned to the Mass Media Bureau. The Mass Media Bureau is not a party to the instant proceeding. Were Mr. Schonman to represent a bureau other than the Mass Media Bureau, such representation would be in direct violation of the congressionally mandated organizational structure of the Commission. Since Mr. Schonman cannot lawfully work for more than one bureau on an integrated basis, the presiding officer should disqualify Mr. Schonman from participation in the instant matter.

On November 1, 1994, Kay filed with Federal District Court for the Middle District of Pennsylvania a complaint against W. Riley Hollingsworth, among other defendants, for violation of his constitutional right to due process of law and for violation of other constitutional rights held by Kay. In that action, Kay seeks damages totalling 2.9 million dollars against Mr. Hollingsworth and the other defendants. On July 27, September 21, and November 2, 1994, Kay had filed complaints with the Commission Chairman concerning Hollingsworth's actions during the course of Mr. Hollingsworth's investigation of Kay which led to the instant proceeding.

Kay intends to call Mr. Hollingsworth as a witness for the purpose of demonstrating that certain of Mr. Hollingsworth's actions during the investigation have fatally tainted the instant proceeding. Rule 3.7(a) of the District of Columbia Rules of Professional Conduct provides that "a lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness."

Certainly, it would be to Mr. Hollingsworth's benefit were he able, in the position of Bureau counsel prosecuting a case against Kay, to establish that Kay were a person of bad character or a chronic violator of the Commission's Rules, because such facts or holdings would be helpful to Mr. Hollingsworth's defense of the legal action which Kay has brought against him. Were Mr. Hollingsworth in a position to impose burdens on Kay in defense of Kay's position in the above captioned matter, Mr. Hollingsworth would thereby succeed in reducing the resources available to Kay in prosecuting his civil action against Mr. Hollingsworth. Therefore, Mr. Hollingsworth has a direct financial and personal interest in the outcome of the instant matter. Were Mr. Hollingsworth to represent the Bureau against Kay in a matter in which Mr. Hollingsworth had a direct financial and personal stake in the outcome, it would be a clear violation of Sections 19.735-201a, 19.735-204(a) of the Commission's Rules, 47 C.F.R. §§19.735-201a & 19.735-204(a).

To avoid even the appearance of impropriety, Mr. Hollingsworth should have recused himself from further participation in matters involving Kay at the time that Kay filed a complaint against Mr. Hollingsworth with the Commission Chairman. Hollingsworth's continued

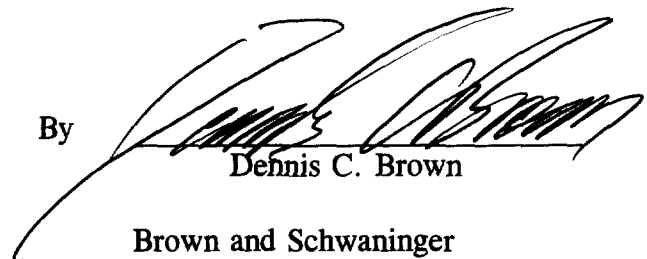
participation in matters involving Kay beyond the time that Kay had filed a legal action against Hollingsworth appears to have been in violation of the Commission's Rules.

Conclusion

For all the foregoing reasons, Kay respectfully requests that Mr. Schonman and Mr. Hollingsworth be disqualified from serving as Bureau counsel in the above captioned matter.

Respectfully submitted,
JAMES A. KAY, JR.

By

A handwritten signature in black ink, appearing to read "Dennis C. Brown", is written over a horizontal line.

Dennis C. Brown

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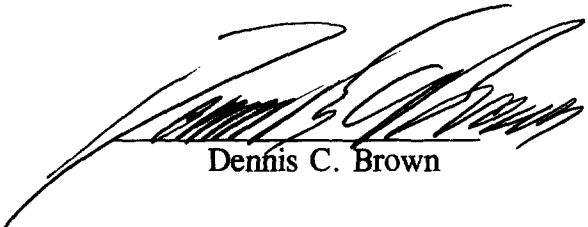
Dated: January 23, 1995

CERTIFICATE OF SERVICE

I hereby certify that on this twenty-third day of January, 1995, I served a copy of the foregoing Motion to Disqualify Counsel on each of the following persons by causing to be delivered to their offices a copy thereof:

Gary P. Schonman, Attorney
Federal Communications Commission
Hearing Branch
Mass Media Bureau
Suite 7212
2025 M Street, N.W.
Washington, D.C. 20554

W. Riley Hollingsworth*
Deputy Associate Bureau Chief
Office of Operations
Federal Communications Commission
1270 Fairfield Road
Gettysburg, Pennsylvania 17325



Dennis C. Brown

* By regular mail